

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	CC Docket No. 99-200
Commission for Delegated Authority to)	
Implement Specialized Transitional Overlays)	

**VONAGE AMERICA, INC.’S REPLY COMMENTS IN SUPPORT OF
THE PETITIONS FOR RECONSIDERATION
OF THE COMMISSION’S SEPTEMBER 9, 2005 ORDER
DELEGATING AUTHORITY TO THE CALIFORNIA PUBLIC UTILITIES
COMMISSION TO IMPLEMENT SPECIALIZED OVERLAYS**

Vonage America Inc. (“Vonage”) hereby submits its comments in response to the petitions for reconsideration filed by Pac-West Telecomm, Inc. (“Pac-West”) and the California Cable and Telecommunications Association (“CCTA”)¹ of the *Order* authorizing the California Public Utilities Commission (“CPUC”) to implement Specialized Overlays (“SOs”).² Vonage previously filed comments opposing the CPUC’s Petition prior to the release of the *Order*.³ While Vonage believes that the CPUC staff had the best of intentions when it filed its Petition, Vonage maintains that the proposed SOs could harm voice competition, are not in the public interest, and are otherwise inconsistent with Commission policy. Indeed, not one party, including the CPUC itself, has filed an opposition to the petitions for reconsideration. For these

¹ See Petition of the California Cable and Telecommunications Association for Reconsideration, CC Docket No. 99-200 (filed Oct. 11, 2005); Petition of Pac-West Telecomm, Inc. for Reconsideration, CC Docket No. 99-200 (filed Oct. 11, 2005).

² *In the Matter of Petition of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays*, Order, CC Docket 99-200, FCC 05-2439 (rel. Sept. 9, 2005) (“*Order*”).

³ See *Vonage Holdings Corp. Comments*, CC Docket No. 99-200 (filed Nov. 17, 2003); *Calif. ISP Assoc. et al Reply Comments*, CC Docket No. 99-200 (filed Dec. 2, 2003).

reasons, Vonage joins the petitioners in requesting that the Commission reconsider its *Order* and either rescind the authority delegated to the CPUC to implement these SOs or, in the alternative, limit the scope of the SOs such that they do not apply to interconnected voice over Internet protocol (“VoIP”) services.

I. THE CPUC PROPOSED SPECIALIZED OVERLAYS VIOLATE THE COMMUNICATIONS ACT

Vonage’s service competes with traditional telecommunications services. Vonage’s customers rely on the ability to take their telephone numbers with them when they migrate to the Company’s service. Vonage’s service appeals to all users of communications services including residential and small business customers. These customers require access to conventional area codes and many customers port their existing telephone numbers to Vonage. By including VoIP services like Vonage’s in the SOs, the CPUC would be placing interconnected VoIP services at a significant competitive disadvantage with other providers of voice communications services.

Section 251(b)(2) of the Telecommunications Act of 1996 (the “Act”) mandates number portability so that consumers choosing to switch service providers are not required to change their telephone numbers.⁴ The Commission has adopted extensive rules that require the industry to enable “service provider” number portability so that consumers can switch providers without having to change their telephone numbers.⁵ As recognized by the Commission in 1996, number portability furthers the critical policy goals of enabling “end users to retain their telephone numbers when changing service providers giv[ing] customers flexibility in the quality, price, and

⁴ Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. § 251(b)(2).

⁵ See 47 U.S.C. § 153(30); 47 C.F.R. § 52.21 *et seq.*; *Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12,281 (1997).

variety of telecommunications services they can choose to purchase.”⁶ But the CPUC’s planned SOs could seriously impair number portability in violation of the Act. Specifically, a Vonage customer that is assigned a telephone number from one of the SOs would not have the ability to port that telephone number to a provider that offers traditional telecommunications services. The same would be true for customers of traditional telephone service that wish to migrate to Vonage’s service. As the Petition stands, the CPUC’s planned SOs violate the Act’s number portability provisions and the Commission should rescind, or narrow the scope of the *Order* to not apply to interconnected VoIP services, for this reason.

The CPUC overlay plan also violates Section 251(e) of the Act which requires that telephone numbers be made available on an “equitable basis.”⁷ Under the current proposal, VoIP services could be limited to obtaining numbers from the SOs while competing wireline circuit-switched and wireless services would remain free to draw numbers from conventional area codes. Accordingly the CPUC proposal would establish an inherently discriminatory framework for the distribution of numbering resources. Users of VoIP services would be placed at a significant disadvantage and would not have equitable access to telephone numbers. Accordingly, the CPUC’s planned SOs are inherently discriminatory in violation of Section 251(e).⁸

⁶ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996).

⁷ Pub. L. 104-104, 110 Stat. 56 (Feb. 8, 1996), codified in part at and amending the Communications Act of 1934, 47 U.S.C. § 251(e).

⁸ For example, the Commission evaluated an overlay plan identical to the CPUC’s plan and rejected it because it would have had a discriminatory effect on wireless and paging carriers. In the *Ameritech Order*, the Commission considered a proposal by Ameritech to implement a wireless-only overlay plan in order to preserve numbering resources in the 708 NPA. *See Proposed 708 Relief Plan and* (cont’d)

II. THE CPUC'S PLANNED SPECIALIZED OVERLAYS ARE INCONSISTENT WITH PRIOR COMMISSION POLICY

In the *Third R&O*, the Commission found that in proposing to establish technology-specific area codes, state commissions must carefully craft such plans for area code relief so as to avoid creating barriers to competition.⁹ Recognizing the potentially harmful affect that technology-specific overlays can have on competition, the Commission concluded that SOs that include geographic-based telephone numbers -- such as the plan proposed by the CPUC -- will be disfavored by the Commission.¹⁰ By including VoIP services in the proposed SOs and by failing to consider the negative impact on consumer voice competition, the proposed SOs plainly violate the Commission's established policy. For this reason alone, the Commission should rescind or at least narrow the authority delegated to the CPUC such that interconnected VoIP services are excluded from the SOs.

An additional shortcoming of the CPUC proposal is that by including geographic-based telephone numbers in the SOs, the CPUC subjected itself to higher standard of review --

630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1996) ("*Ameritech Order*"). In rejecting the plan, the Commission found it discriminatory that number assignments would continue in the 708 NPA for wireline carriers only, but paging and cellular carriers would be excluded from such assignments. *See Ameritech Order*, 10 FCC Rcd at 4605.

⁹ *Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, 284-285 ("*Third R&O*") ("[C]onsumers may be dissuaded from signing up for wireless services if they do not have access to telephone numbers in the 'incumbent' area code.").

¹⁰ *See id.* at 17 FCC Rcd at 288 ("[The Commission] specifically favor[s] service-specific overlays that would include and retain non-geographic based services as a means to further reduce demand in the underlying area code.").

¹⁴ *See Third R&O*, 17 FCC Rcd at 285-86.

requiring it to demonstrate how the underlying area codes would be preserved in a more efficient manner than if an all-services overlay was implemented.¹⁴ The Petition failed to provide such justification. The Petition does not even specifically reference the specific area codes it is seeking to preserve; the CPUC therefore failed to satisfy the Commission's existing policy.¹⁵

III. THE CPUC'S PROPOSED SPECIALIZED OVERLAYS WILL CAUSE CONSUMER CONFUSION

Aside from the legal reasons for reconsidering the CPUC's proposed overlays, there are a number of important practical reasons for withdrawing or limiting the authority delegated to the CPUC. Chief among these is the consumer confusion that is sure to arise should the CPUC implement the proposed SOs. For example, the Northern SO would encompass both San Francisco and Sacramento that have separate area codes. Within these distinct area codes are approximately 800 central office codes and "dozens, or perhaps even hundreds, of distinct local calling areas."¹⁶ The CPUC provided no explanation how consumers calling a VoIP customer would determine whether calls made between the SOs and the conventional area codes would be considered "local" or "long distance." Given the massive consumer confusion that would result from the proposed SOs, the Commission should either rescind the delegated authority granted to

¹⁵ It is unclear whether the CPUC's proposed SOs would result in any number conservation whatsoever. The CPUC's plan would divide demand for numbers between existing and specialized overlays. In area codes where pooling has been implemented, carriers cannot obtain telephone numbers in units less than thousands-blocks. Thus, these same providers that are able now to draw numbers from single thousands-blocks to satisfy demand would need a minimum of two thousands-blocks in each rate center. It is conceivable that the CPUC's proposal would use more numbering resources, reduce utilization rates within thousands-blocks, and strand large quantities of numbering resources. Since the CPUC never demonstrated that its proposed SOs would result in preserving or using telephone numbers more efficiently, it does not qualify as a number resource optimization plan. The Commission can therefore withdraw its grant of delegated authority on this basis.

¹⁶ *Id.*

the CPUC or limit the grant to services that exclude interconnected VoIP and do not involve the transmission of voice communications between consumers.

IV. CONCLUSION

Vonage urges the Commission to reconsider or narrow the authority it granted to the CPUC to implement SOs. The CPUC proposed SOs violates both Sections 251(b)(2) and (e) of the Act and is inconsistent with Commission precedent. Moreover, if adopted, the CPUC proposal could have a detrimental impact on innovation, consumer choice and voice competition within the State of California and would cause significant consumer confusion. Taken together, it is clear that the Commission should either withdraw the *Order* delegating authority to the CPUC or narrow its scope such that it does not apply to interconnected VoIP services.

Respectfully submitted,

/s/

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February 6, 2006

I, Linda Crelling, do hereby certify that on this 6th day of February, 2006, I caused to be served a true and correct copy of the foregoing Reply Comments of Vonage America, Inc.. by electronic filing or U.S. mail to the following:

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+ **VIA ELECTRONIC FILING**